

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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NOV 9 2001

DATE: NOVEMBER 9, 2001

DOCKET NO: T-03845A-00-0141

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda.  
The recommendation has been filed in the form of an Order on:

LYXOM, INC.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 19, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 27, 2001 and NOVEMBER 28, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1200 WEST WASHINGTON; PHOENIX, ARIZONA 85007-2996 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.cc.state.az.us](http://www.cc.state.az.us)

This document is available in alternative formats by contacting Shelly Hood,  
ADA Coordinator, voice phone number 602/542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
7 LYXOM, INC. FOR A CERTIFICATE OF  
8 CONVENIENCE AND NECESSITY TO PROVIDE  
9 COMPETITIVE INTRASTATE  
TELECOMMUNICATIONS SERVICES AS A  
RESELLER, EXCEPT LOCAL EXCHANGE  
SERVICES

DOCKET NO. T-03845A-00-0141

DECISION NO. \_\_\_\_\_

**ORDER**

10 Open Meeting  
11 November 27 and 28, 2001  
12 Phoenix, Arizona

**BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the  
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On, March 2, 2000, Lyxom, Inc. ("Lyxom" or "Applicant") filed with the Commission  
17 an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive  
18 resold intrastate telecommunications services, except local exchange services, within the State of  
19 Arizona.

20 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
21 telecommunications providers ("resellers") were public service corporations subject to the  
22 jurisdiction of the Commission.

23 3. Applicant is a Delaware corporation, authorized to do business in Arizona since 1999.

24 4. Applicant is a switchless reseller, which purchases telecommunications services from  
25 a variety of carriers.

26 5. On, May 22, 2000, Lyxom filed Affidavits of Publication indicating compliance with  
27 the Commission's notice requirements.

28 6. On August 18, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report recommending approval of the application.

2       7. In its Staff Report, Staff stated that Lyxom provided financial statements dated  
3 October 21, 1999, which indicated assets of \$186,294, shareholders' equity of \$175,000, and  
4 liabilities of \$11,294. Based on the foregoing, Staff believes that Applicant lacks adequate financial  
5 resources to be allowed to charge customers any prepayments, advances, or deposits without either  
6 establishing an escrow account or posting a surety bond to cover such prepayments, advances, or  
7 deposits. If at some future date, the Applicant wants to charge customers any prepayments, advances  
8 or deposits, it must file information with the Commission that demonstrates the Applicant's financial  
9 viability. Upon receipt of such filing, Staff will review the information and the Commission will  
10 make a determination concerning the Applicant's financial viability and whether customer  
11 prepayments, advances or deposits should be allowed. Additionally, Staff believes that if the  
12 Applicant experiences financial difficulty, there should be minimal impact to its customers.  
13 Customers are able to dial another reseller or facilities-based provider to switch to another company.

14       8. Staff recommended approval of the application subject to the following conditions,  
15 that:

16       (a) The Applicant should be ordered to comply with all Commission rules, orders,  
17 and other requirements relevant to the provision of intrastate telecommunications  
18 service;

19       (b) The Applicant should be ordered to maintain its accounts and records as  
20 required by the Commission;

21       (c) The Applicant should be ordered to file with the Commission all financial and  
22 other reports that the Commission may require, and in a form and at such times as the  
23 Commission may designate;

24       (d) The Applicant should be ordered to maintain on file with the Commission all  
25 current tariffs and rates, and any service standards that the Commission may require;

26       (e) The Applicant should be ordered to comply with the Commission's rules and  
27 modify its tariffs to conform to these rules if it is determined that there is a conflict  
28 between the Applicant's tariffs and the Commission's rules;

      (f) The Applicant should be ordered to cooperate with Commission investigations  
of customers complaints;

1 (g) The Applicant should be ordered to participate in and contribute to a universal  
2 service fund, as required by the Commission;

3 (h) The Applicant file its tariffs within 30 days of an Order in this matter, and in  
4 accordance with the Decision;

5 (i) The Applicant should be ordered to notify the Commission immediately upon  
6 changes to the Applicant's address or telephone number;

7 (j) The Applicant's intrastate interexchange service offerings should be classified  
8 as competitive;

9 (k) The Applicant's competitive services should be priced at the rates proposed by  
10 the Applicant in its most recently filed tariffs. The maximum rates for these services  
11 should be the maximum rates proposed by the Applicant in its proposed tariffs. The  
12 minimum rates for the Applicant's competitive services should be the Applicant's total  
13 service long run incremental costs of providing those services;

14 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
15 competitive service, the rate stated should be the effective (actual) price to be charged  
16 for the service as well as the service's maximum rate.

17 9. The Staff Report also stated that Applicant has no market power and the  
18 reasonableness of its rates would be evaluated in a market with numerous competitors.

19 10. No exceptions were filed to the Staff Report, nor did any party request that a hearing  
20 be set.

21 11. On August 29, 2000, the Arizona Court issued its Opinion in US WEST  
22 Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the  
23 Arizona Constitution requires the Commission to determine fair value rate bases for all public service  
24 corporations in Arizona prior to setting their rates and charges."

25 12. On October 26, 2000, the Commission filed a Petition for Review to the Supreme  
26 Court.

27 13. On February 13, 2001, the Commission's Petition was granted.

28 14. By Procedural Order dated September 11, 2000, the Commission ordered Applicant to  
file information concerning its fair value rate base ("FVRB").

15. On November 9, 2000, Applicant filed a request for an extension to file its FVRB  
information.

16. By Procedural Order dated December 6, 2000, the Commission extended the time to file FVRB information until February 5, 2001, and extended the time deadlines of R14-2-1103.

17. Applicant did not file FVRB information.

18. Current Commission policy requires reseller applicants to file FVRB information within 18 months of the effective date of this Decision, based on twelve months of operating information.

## CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold intrastate telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate for providing competitive intrastate telecommunications services as a reseller in Arizona as conditioned herein.

6. Staff's recommendations in Findings of Fact No. 7 and 8 are reasonable and should be adopted.

## ORDER

IT IS THEREFORE ORDERED that the application of Lyxom, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive intrastate telecommunications services, except local exchange services, as a reseller shall be and the same is hereby granted subject to Staff's recommended conditions set forth in Finding of Fact No. 7 above.

IT IS FURTHER ORDERED that Lyxom, Inc. shall not be authorized to charge customers any prepayments, advances, or deposits. In the future, if Lyxom, Inc. desires to initiate such charges, it must file information with the Commission that demonstrates the Applicant's financial viability. Staff shall review the information provided and file its recommendation concerning financial viability and/or the necessity of obtaining a surety bond within thirty (30) days of receipt of the financial

1 information, for Commission approval.

2 IT IS FURTHER ORDERED that Lyxom, Inc. shall file the following FVRB information  
3 within 18 months of the date that it first provides service. The FVRB shall include a dollar amount  
4 representing the total revenue for the first twelve months of telecommunications service provided to  
5 Arizona customers by Lyxom, Inc. following certification, adjusted to reflect the maximum rates  
6 Lyxom, Inc. requests in its tariff. This adjusted total revenue figure could be calculated as the  
7 number of units sold for all services offered times the maximum charge per unit. Lyxom, Inc. shall  
8 also file FVRB information detailing the total actual operating expenses for the first twelve months of  
9 telecommunications service provided to Arizona customers by Lyxom, Inc. following certification.  
10 Lyxom, Inc. shall also file FVRB information which includes a description and value of all assets,  
11 including plant, equipment, and office supplies, to be used to provide telecommunications service to  
12 Arizona customers for the first twelve months following Lyxom, Inc.'s certification.

13 IT IS FURTHER ORDERED that Lyxom, Inc. shall comply with Staff's recommendations as  
14 set forth in Findings of Fact No. 8.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,  
 2 Lyxom, Inc. shall notify the Compliance Section of the Arizona Corporation Commission of the date  
 3 that it will begin or has begun providing service to Arizona customers and whether it is, or intends to  
 4 charge prepayments, advances or deposits.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 8  
 9 CHAIRMAN

COMMISSIONER

COMMISSIONER

10  
 11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 12 Secretary of the Arizona Corporation Commission, have  
 13 hereunto set my hand and caused the official seal of the  
 14 Commission to be affixed at the Capitol, in the City of Phoenix,  
 this \_\_\_\_ day of \_\_\_\_\_, 2001.

15 \_\_\_\_\_  
 16 BRIAN C. McNEIL  
 EXECUTIVE SECRETARY

17 DISSENT \_\_\_\_\_

18 JR:dp

1 SERVICE LIST FOR: LYXOM, INC.  
2  
3 DOCKET NO.: T-03845A-00-0141

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